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Message Text

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ORIGIN ACDA-10

INFO OCT-01 EA-07 IO-11 ISO-00 OES-03 ERDA-05 CIAE-00

EUR-12 H-02 INR-07 L-03 NSAE-00 OIC-02 OMB-01 PA-01

PM-04 PRS-01 SAJ-01 SAM-01 SP-02 SS-15 TRSE-00

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E.O. 11652:GDS

TAGS: PARM, JA

SUBJECT: HISTORICAL BACKGROUND OF ARTICLE III OF NPT

REF: TOKYO 2234

1. NUCLEAR PROPULSION OF SUBMARINES OR OTHER WARSHIPS IS THE ONLY NON-EXPLOSIVE MILITARY USE WE HAVE FOUND MENTIONED IN THE PUBLIC RECORD THAT PRECEDED OUR RATIFICATION OF THE NPT. FYI. WHILE SOME OTHER EXAMPLES WOULD BE THE USE OF A RESEARCH REACTOR BY MILITARY AUTHORITIES TO TEST
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THE EFFECTS ON EQUIPMENT OF EXPOSURE TO RADIATION, OR A

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SNAP POWER SOURCE BY A MILITARY USER, EMBASSY SHOULD NOT VOLUNTEER THESE EXAMPLES, BUT MAY ACKNOWLEDGE THEM IF ASKED. END FYI.

2. AS STATED IN THE PRESIDENT'S MESSAGE TO THE SENATE SUBMITTING THE NPT FOR RATIFICATION:

----"ARTICLES I AND II WERE THE FIRST SUBSTANTIVE ACTICLES TO BE INCLUDED IN THEIR PRESENT FORM IN THE TREATY TEXT. BEFORE ANY OF THE OTHER SUBSTANTIVE ARTICLES HAD BEEN ADDED, THESE TWO ARTICLES PROMPTED SEVERAL QUESTIONS FROM OUR NATO ALLIES."

THE QUESTIONS AND THE ANSWERS GIVEN BY THE UNITED STATES WERE APPENDED TO THE MESSAGE, AND INCLUDE THE FOLLOWING:

----Q. WHAT MAY AND WHAT MAY NOT BE TRANSFERRED UNDER THE DRAFT TREATY?

----A. THE TREATY DEALS ONLY WITH WHAT IS PROHIBITED, AND NOT WITH WHAT IS PERMITTED.

---- IT PROHIBITS TRANSFER TO ANY RECIPIENT WHATSOEVER OF "NUCLEAR WEAPONS" OR CONTROL OVER THEM, MEANING BOMBS AND WARHEADS. IT ALSO PROHIBITS THE TRANSFER OF OTHER NUCLEAR EXPLOSIVE DEVICES BECAUSE A NUCLEAR EXPLOSIVE DEVICE INTENDED FOR PEACEFUL PURPOSES CAN BE USED AS A WEAPON OR CAN EASILY BE ADAPTED FOR SUCH USE.

---- IT DOES NOT DEAL WITH, AND THEREFORE DOES NOT PROHIBIT, TRANSFER OF NUCLEAR DELIVERY VEHICLES OR DELIVERY SYSTEMS, OR CONTROL OVER THEM TO ANY RECIPIENT, SO LONG AS SUCH TRANSFER DOES NOT INVOLVE BOMBS OR WARHEADS."

3. IN THE RATIFICATION HEARINGS, THE DEFENSE DEPARTMENT SUBMITTED THE FOLLOWING ANSWER TO A QUESTION RAISED BY SENATOR HICKENLOOPER:

----"THE NEGOTIATING HISTORY OF THE NON-PROLIFERATION TREATY FULLY SUPPORTS THE RESPONSE BY SENATOR PASTORE TO CONFIDENTIAL

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THE EFFECT THAT A NUCLEAR SUBMARINE (AS DISTINGUISHED FROM A NUCLEAR BOMB THAT MIGHT BE CARRIED ON SUCH A SUBMARINE) IS NOT CONSIDERED TO BE A "NUCLEAR WEAPON" WITHIN THE MEANING OF THIS TREATY." (SENATOR PASTORE HAD ADDED THAT "NUCLEAR WEAPON" IN THE TREATY HAD THE SAME MEANING AS THE DEFINITION OF ATOMIC WEAPON IN OUR ATOMIC ENERGY ACT).

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4. YOU MAY TELL OTSUKA FOR HIS BACKGROUND THAT IN WORKING OUT ARTICLE III OF THE TREATY SEVERAL OF OUR ALLIES INSISTED THAT THE PURPOSE OF THE SAFEGUARDS REQUIRED BY THAT ARTICLE BE MADE TO CORRESPOND EXACTLY WITH ARTICLES I AND II, SINCE THEY DID NOT BELIEVE THAT ANYTHING IN THE TREATY SHOULD FORECLOSE THE OPTION TO USE NUCLEAR MATERIALS FOR NON-EXPLOSIVE MILITARY USES, SUCH AS NUCLEAR PROPULSION OF WARSHIPS. WE RECOGNIZED THE POTENTIAL PROBLEMS THIS MIGHT CAUSE IN TWO RESPECTS: (A) QUESTIONS ABOUT IAEA'S LEGAL AUTHORITY TO SAFEGUARD MATERIALS BEING USED FOR A NON-EXPLOSIVE MILITARY PURPOSE IN LIGHT OF ITS STATUTORY MANDATE TO ENSURE THAT SAFEGUARDED MATERIALS WERE NOT USED TO FURTHER ANY MILITARY PURPOSE; AND (B) THE EXTREME UNLIKELIHOOD THAT ANY COUNTRY WOULD PERMIT INTERNATIONAL

SAFEGUARDS ON ANY MILITARY ACTIVITY. BUT THESE PROBLEMS WOULD REMAIN PURELY THEORETICAL UNLESS AND UNTIL A PARTY TO THE TREATY ACTUALLY DECIDED TO PURSUE SOME NON-EXPLOSIVE MILITARY USE OF MATERIALS; AND INSOFAR AS SUCH A PARTY WAS DEPENDENT ON IMPORTS TO DO SO, THE SUPPLIER COULD, APART FROM THE TREATY, EITHER PRECLUDE THE USE FOR SUCH PURPOSE OF ANY EQUIPMENT OR MATERIAL IT HAD FURNISHED FOR CIVIL USES (AS WE WOULD BE REQUIRED TO DO BY THE ATOMIC ENERGY ACT), OR MAKE SPECIAL BILATERAL SAFEGUARDS ARRANGEMENTS. ACCORDINGLY, ARTICLE III WAS WRITTEN TO REQUIRE IAEA SAFEGUARDS ON ALL PEACEFUL NUCLEAR ACTIVITIES OF NNWS FOR THE PURPOSE OF ENSURING THAT THEY WERE NOT DIVERTED TO NUCLEAR WEAPONS OR OTHER NUCLEAR EXPLOSIVE DEVICES.

5. AS OTSUKA KNOWS, THE SAFEGUARDS COMMITTEE WROTE INTO INFCIRC 153 A REQUIREMENT THAT ANY STATE WHICH WISHED TO EXERCISE THE NON-EXPLOSIVE MILITARY OPTION WOULD HAVE TO CONFIDENTIAL

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SHOW THAT THE MATERIAL TO BE USED WAS NOT SUBJECT TO AN UNDERTAKING APART FROM THE TREATY AGAINST ITS USE TO FURTHER ANY MILITARY PURPOSE; TO MAKE ARRANGEMENTS PROVIDING ASSURANCE THAT IT WAS NOT BEING USED FOR NUCLEAR EXPLOSIVES; AND TO RESUBMIT IT TO SAFEGUARDS IF IT SUBSEQUENTLY APPEARED IN A CIVIL NUCLEAR FACILITY. NO STATE HAS INVOKED THESE PROVISIONS TO DATE. ANY STATE WHICH DID SO WOULD NOT ONLY HAVE TO MEET THE REQUIREMENTS OF INFCIRC 153 MENTIONED ABOVE, BUT WOULD ALSO HAVE TO SATISFY ANY STATES FROM WHICH IT HAD RECEIVED NUCLEAR SUPPLIES THAT NO VIOLATION OF BILATERAL UNDERTAKINGS TO THEM WAS INVOLVED. INGERSOLL

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